

REMARKS

Favorable reconsideration of this application is respectfully requested in view of the claim amendments and following remarks.

Status of Claims

Claims 1-3, 5-12 and 15-18 are currently pending in the application of which claims 1, 8 and 15 are independent. Claims 1-3, 5-12 and 15-18 were rejected. Claims 4, 13-14, and 19-20 were previously canceled.

Summary of the Office Action

Claims 1-3, 5-12 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,058,704 to Mangipudi et al. (hereinafter "Mangipudi") in view of U.S. Patent No. 6,925,493 to Barkan et al. (hereinafter "Barkan").

Drawings

The Office Action did not indicate whether the formal drawings filed with the application are accepted. Indication of acceptance of the drawings is requested.

Claim Rejections Under 35 U.S.C. §103(a)

The test for determining if a claim is rendered obvious by one or more references for purposes of a rejection under 35 U.S.C. § 103 is set forth in *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007):

"Under §103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of

ordinary skill in the pertinent art resolved. Against this background the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented.” Quoting *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1 (1966).

As set forth in MPEP 2143.03, to ascertain the differences between the prior art and the claims at issue, “[a]ll claim limitations must be considered” because “all words in a claim must be considered in judging the patentability of that claim against the prior art.” *In re Wilson*, 424 F.2d 1382, 1385. According to the Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of *KSR International Co. v. Teleflex Inc.*, Federal Register, Vol. 72, No. 195, 57526, 57529 (October 10, 2007), once the *Graham* factual inquiries are resolved, there must be a determination of whether the claimed invention would have been obvious to one of ordinary skill in the art based on any one of the following proper rationales:

(A) Combining prior art elements according to known methods to yield predictable results; (B) Simple substitution of one known element for another to obtain predictable results; (C) Use of known technique to improve similar devices (methods, or products) in the same way; (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results; (E) “Obvious to try”—choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success; (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations would have been predictable to one of ordinary skill in the art; (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. *KSR International Co. v. Teleflex Inc.*, 550 U.S.398, 82 USPQ2d 1385 (2007).

Furthermore, as set forth in *KSR International Co. v. Teleflex Inc.*, quoting from *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006), “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasonings with some rational underpinning to support the legal conclusion of obviousness.”

Therefore, if the above-identified criteria and rationales are not met, then the cited reference(s) fails to render obvious the claimed invention and, thus, the claimed invention is distinguishable over the cited reference(s).

- **Claims 1-3, 5-12 and 15-18**

Claims 1-3, 5-12 and 15-18 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,058,704 to Mangipudi in view of Barkan.

Claim 1 has been amended to recite in response to receiving the end user request after the user class is assigned to the end user, generating a contract for the interactive session." Mangipudi in view of Barkan fails to teach or suggest generating a contract in response to a receiving a user request for an interactive session, especially after the user class is assigned to the end user. In other words, Mangipudi in view of Barkan fails to teach or suggest assigning the user class, receiving the end user request after the assigning of the user class, and then generating the contract in response to receiving the request. This progression of steps in this order are not disclosed.

Furthermore, claim 1 has been amended to recite in great detail the specific steps used to create the contract. Claim 1 recites,

for each of the application programs, obtaining from an application profile for the application program, CPU and bandwidth requirements for the application program;

estimating a total CPU and bandwidth requirement for the application programs from the CPU and bandwidth requirements determined for each application program and based on an order of execution of the application programs and the resource allocation policies for the end user's user class; and

generating the contract for the interactive session using the end user's class, the resource allocation policies for the end user's class, and the estimated total CPU and bandwidth requirement.

None of these steps for contract generation are disclosed in Mangipudi in view of Barkan. Furthermore, note that the order of execution of the application programs is used to generate the contract. Mangipudi in view of Barkan fails to teach or suggest this feature.

Also, the rejection asserts that Mangipudi discloses receiving a request for an interactive session, determining a user's subscribed level of service and class-based SLA reporting. However, none of the features are used to generate the SLA. The SLA is already generated in Mangipudi and specifies the user's subscribed level of service. Neither Mangipudi nor Barkan teach or suggest using the user's class to generate an SLA.

Independent claims 8 and 11 have been amended to recite features similar to claim 1 described above that are not taught or suggested by Mangipudi in view of Barkan. Accordingly, claims 1-3, 5-12 and 15-18 are believed to be allowable.

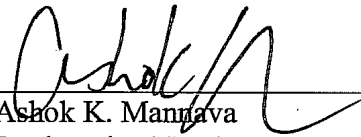
Conclusion

In light of the foregoing, withdrawal of the rejections of record and allowance of this application are earnestly solicited. Should the Examiner believe that a telephone conference with the undersigned would assist in resolving any issues pertaining to the allowability of the above-identified application, please contact the undersigned at the telephone number listed below. Please grant any required extensions of time and charge any fees due in connection with this request to Deposit Account No. 08-2025.

Respectfully submitted,

Dated: September 2, 2009

By



Ashok K. Mannava
Registration No. 45,301
(703) 652-3822

MANNAVA & KANG, P.C.
11240 Waples Mill Road
Suite 300
Fairfax, VA 22030
(703) 865-5150 (facsimile)